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*Carl Karcher Enterprises, Inc.*

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

HOLLY MARIE WOOD,  
Plaintiff,

CASE NO: 2:20-cv-2329-APG-BNW

v.

CARL'S JR., operated and owned by BTO  
INVESTMENTS, a Delaware corporation;  
S.L INVESTMENTS, a Nevada corporation;  
CKE RESTAURANTS, INC., a Delaware  
Corporation; CARL'S JR. RESTAURANTS  
HOLDINGS, INC., a foreign corporation;  
RUCEY MOLINA CRUZ, an individual;  
DOES 1-10, inclusive; ROE  
CORPORATIONS/ ENTITIES 1-10  
inclusive,

Defendants.

**DEFENDANTS' JOINT MOTION FOR PROTECTIVE ORDER**

COME NOW Defendants CARL'S JR. RESTAURANTS LLC, CKE RESTAURANTS,  
INC., CKE RESTAURANTS HOLDINGS, INC., CARL KARCHER ENTERPRISES, INC.  
(collectively, "CKE"), BTO INVESTMENTS, and S.L. INVESTMENTS, by and through their  
respective counsel of record, and hereby file this Joint Motion for Protective Order. This Motion

1 is made and based upon the following Memorandum of Points and Authorities submitted in  
2 support hereof.

### 3 **MEMORANDUM OF POINTS AND AUTHORITIES**

#### 4 **I. STATEMENT OF FACTS**

5 Plaintiff claims Defendants are in violation of Title VII of the Civil Rights Act of 1964  
6 based on alleged discrimination arising from the sexual harassment, sexual assault, and battery of  
7 Plaintiff by Defendant Rucey Cruz. Plaintiff Holly Marie Wood began her employment at Carl's  
8 Jr. located at 1440 West Cheyenne Avenue in North Las Vegas, Nevada in August 2018.  
9 Plaintiff claims soon after her hire date, another Carl's Jr. employee, 33-year-old Rucey Molina  
10 Cruz, sexually harassed and assaulted her.

11 It is Defendants' position that relevant documentation and discovery sought in this action  
12 requires the production of certain confidential, business, commercial, personnel, and financial  
13 information, as well as other confidential information, and that Defendants have a legitimate  
14 need to protect the confidentiality of such information. Plaintiff specifically requested that  
15 Defendants produce a copy of the applicable Franchise Agreement between CKE and S.L.  
16 Investments, Inc., (subsequently assigned to BTO Investments). Defendants have objected to the  
17 production of this document until such time that an appropriate Protective Order is entered to  
18 protect Defendants' confidential and proprietary information. Defendants have proposed and  
19 agreed to a Stipulated Protective Order, but Plaintiff will not agree.

20 In Plaintiff's Second Supplemental 26(a)(1) Disclosure, she produced a sample franchise  
21 agreement titled "Sample 'Form of Carl's Jr. Restaurant Franchise Agreement' 'Carl's Jr.  
22 Restaurant Franchise Agreement' available" on the internet.<sup>1</sup> While this may be a "sample"  
23 franchise agreement, the actual Franchise Agreement between CKE and S.L. Investments, Inc.

24 \_\_\_\_\_  
1 [https://www.sec.gov/Archives/edgar/data/919628/000091962812000005/cke-05212012\\_ex102x10q.htm](https://www.sec.gov/Archives/edgar/data/919628/000091962812000005/cke-05212012_ex102x10q.htm)

(BTO Investments), discusses specific terms including the franchise fee, royalty fees, advertising and promotion obligations, and ownership interests as included in Appendix A through D of the agreement. The sample agreement produced by Plaintiff was not executed and the appendixes regarding fees and ownership interests are blank. Defendants therefore seek entry of a Protective Order to prevent the actual Franchise Agreement and Appendixes and other confidential information from being publicly available or distributed, as necessary to protect Defendants' proprietary and financial information.

## II. ARGUMENT

Courts generally recognize a right to inspect and copy public records and documents, including judicial records and documents. *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978). There is a strong "presumption in favor of access to court records." *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). The presumption of access "promotes the public's understanding of the judicial process and of significant public events." *Murname v. Las Vegas Metro. Police Dep't*, 2015 WL 5638224, at \*1 (D. Nev. Sept. 24, 2015) (citing *Kamakana v. City and Cty. Of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (citation omitted).

The common law right of access is, however, not absolute and is premised upon a specific rationale that should guide its application. *Nixon*, 435 U.S. at 598. The United States District Court in Nevada has held that it is "well-established that the court has the authority to shield proprietary information related to the ongoing operations of a business from public review." *Selling Source v. Red River Ventures*, 2011 WL 1630338, at \*1 (D. Nev. Apr. 29, 2011). "Where the material includes information about proprietary business operations, a company's business model or agreements with clients, there are compelling reasons to seal the material because possible infringement of trade secrets outweighs the general public interest in understanding the judicial process." *Id.* at \*6.

1 The Ninth Circuit Court of Appeals has adopted the Restatement's definition of "trade  
 2 secret." *Apple Inc. v. Samsung Elecs. Co.*, 727 F.3d 1214, 1222 (Fed. Cir. 2013), citing *Clark v.*  
 3 *Bunker*, 453 F.2d 1006, 1009 (9th Cir. 1972). Under this definition, a trade secret is "any  
 4 formula, pattern, device or compilation of information which is used in one's business, and  
 5 which gives him an opportunity to obtain an advantage over competitors who do not know or use  
 6 it." *Id.* (quoting Restatement (First) of Torts § 757, cmt. b (1939)). The First Restatement states:

7 An exact definition of a trade secret is not possible. Some factors to be considered  
 8 in determining whether given information is one's trade secret are: (1) the extent  
 9 to which the information is known outside of his business; (2) the extent to which  
 10 it is known by employees and others involved in his business; (3) the extent of  
 11 measures taken by him to guard the secrecy of the information; (4) the value of  
 12 the information to him and to his competitors; (5) the amount of effort or money  
 13 expended by him in developing the information; (6) the ease or difficulty with  
 14 which the information could be properly acquired or duplicated by others.

15 *Id.* Defendants maintain that the information sought and discovery to be sought meets the factors  
 16 of the Restatement.

17 **A. The Specific Terms of Defendants' Franchise Agreement are Proprietary and Not**  
 18 **Readily Available nor Accessible to the Public Satisfying the First, Second, and**  
 19 **Third Factors of the Restatement**

20 The Franchise Agreement and relevant Appendixes between CKE and S.L. Investments  
 21 (subsequently assigned to BTO Investments) contains confidential and financial information that  
 22 is not readily available nor accessible to the public. During discussions regarding the proposed  
 23 Stipulated Protective Order, Plaintiff claimed that Carl's Jr. Franchise Agreement was not  
 24 confidential and could be accessible to the public on the internet. On September 9, 2021, Plaintiff  
 served her Second Supplemental List of Witnesses and Production of Documents which included  
 a "sample" form of Carl's Jr. Restaurant Franchise Agreement. Notably, the sample agreement  
 disclosed by Plaintiff was blank and did not include specific information regarding franchise and  
 royalty fees, advertising and promotion obligations, nor ownership interests.

1 The specific terms of the subject agreement are not available to the general public,  
2 making the agreement *de facto* guarded. The only parties privy to the specific financial terms and  
3 obligations of the Franchise Agreement are the parties identified within that agreement,  
4 specifically the Defendants. If the specific Franchise Agreement were available on the internet,  
5 then Plaintiff's request for production of that document seems unwarranted and Plaintiff would  
6 arguably have produced the specific agreement rather than a "sample." Defendants have  
7 therefore asked that a Stipulated Protective Order be entered in this case, limiting the  
8 dissemination of this information to those parties and designated representatives involved in this  
9 litigation. Defendants seek to maintain the confidential nature of this agreement and the financial  
10 information contained therein, and therefore request that a Protective Order be entered.

11 **B. The Financial Information Contained Within the Franchise Agreement is Valuable**  
12 **to Defendants, Was Based on Negotiations Between Defendants, and Could be**  
13 **Easily Acquired by Others Without a Protective Order**

14 The subject Franchise Agreement includes terms regarding the details of the contract  
15 between CKE and S.L. Investments (subsequently transferred to BTO Investments), such as fees  
16 and obligations of each participating party, including specific financial information and  
17 obligations. This information is unquestionably valuable to Defendants and could potentially be  
18 valuable to Defendants' competitors by allowing them specific information as to franchise and  
19 royalty fees and specific obligations. Further, the subject Franchise Agreements and subsequent  
20 Assignment Agreement are the result of time, negotiations, and financial investment by  
21 Defendants. If this information was disclosed without appropriate protection, it could prejudice  
22 Defendants in future negotiations or agreements with other, unrelated entities. Investments and  
23 franchise ventures are aggressive business environments and with companies constantly  
24 competing for the best deal, and confidentiality is an invaluable element. Once publicly  
available, Defendants would have no recourse or way to subsequently protect their financial

information. Defendants have therefore met the remaining factors identified in the First Restatement and request that a Protective Order be entered before Defendants are required to provide the specific Franchise Agreement and related assignment or franchise documents.

### III. CONCLUSION

Based upon the foregoing, Defendants respectfully requests the instant motion be granted and a Protective Order be entered to protect Defendants' confidential and proprietary franchise and financial information.

Dated this 12th day of October 2021

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Dated this 12th day of October 2021

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/s/ Jesselyn De Luna

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### **Order**

IT IS ORDERED that ECF No. 57 is DENIED without prejudice for failure to follow Local Rule 26-6(c).

IT IS SO ORDERED

DATED: 10:27 am, October 13, 2021



BRENDA WEKSLER  
UNITED STATES MAGISTRATE JUDGE

**CERTIFICATE OF ELECTRONIC SERVICE**

I certify that on the 12th day of October, 2021, service of the above and foregoing  
**DEFENDANTS' JOINT MOTION FOR PROTECTIVE ORDER** was made by  
electronically filing a true and correct copy of the same to each party addressed as follows:

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